

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WILLIAM JAMES,		:
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	Plaintiff,	:
		:
-against-		:
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		:
LIFEWATCH, INC.,		:
	Defendant.	:
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Case No. 2:16-cv-03552-SJF-AYS

LIFEWATCH INC.'s
ANSWER TO COMPLAINT

Defendant Lifewatch, Inc. by and through the undersigned attorneys, responds to the Complaint as follows:

1. Lifewatch denies the allegations against it in Paragraph 1 of Plaintiff's Complaint.
2. Lifewatch denies the allegations against it in Paragraph 2 of Plaintiff's Complaint and respectfully refers legal questions to the court for determination.
3. Lifewatch denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted in Paragraph 3 of Plaintiff's Complaint.
4. As to the allegations in Paragraph 4 of Plaintiff's Complaint, Lifewatch admits only that it is a New York business entity with an address of 266 Merrick Road, Lynbrook, NY, and respectfully refers legal questions to the court for determination.
5. Lifewatch denies the allegations against it in Paragraph 5 of Plaintiff's Complaint.
6. Lifewatch denies the allegations against it in Paragraph 6 of Plaintiff's Complaint.
7. Lifewatch denies the allegations against it in Paragraph 7 of Plaintiff's Complaint.

8. Lifewatch denies the allegations against it in Paragraph 8 of Plaintiff's Complaint.
9. Lifewatch denies the allegations against it in Paragraph 9 of Plaintiff's Complaint.

FIRST CAUSE OF ACTION

10. Lifewatch repeats and realleges the responses set forth above as if fully set forth herein.
11. Lifewatch denies the allegations against it in Paragraph 11 of Plaintiff's Complaint.
12. Lifewatch denies the allegations against it in Paragraph 12 of Plaintiff's Complaint.
13. Lifewatch denies the allegations against it in Paragraph 13 of Plaintiff's Complaint.
14. Lifewatch denies the allegations against it in Paragraph 14 of Plaintiff's Complaint.
15. Lifewatch denies that it placed calls to plaintiff as alleged in Paragraph 15 of Plaintiff's Complaint.
16. Lifewatch denies the allegations against it in Paragraph 16 of Plaintiff's Complaint.
17. Lifewatch denies the allegations against it in Paragraph 17 of Plaintiff's Complaint.

LIFEWATCH, INC.'S AFFIRMATIVE DEFENSES

Lifewatch, by and through its attorneys, asserts the following affirmative defenses and reserves the right to assert additional affirmative defenses as needed and as the litigation continues:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the principles of waiver, estoppel, unclean hands, and/or other equitable doctrines.

THIRD AFFIRMATIVE DEFENSE

The damages claimed by Plaintiff are not available at law to remedy the conduct alleged.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, are the result of Plaintiffs' own actions, omissions, or conduct.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, are the result of third parties over whom Defendants have no control.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because Plaintiff has or had a business relationship with Defendants and/or provided consent.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because he failed to mitigate the alleged damages.

EIGHTH AFFIRMATIVE DEFENSE

Lifewatch cannot be held vicariously liable for the allegedly offending telephone calls because Lifewatch did not initiate telemarketing calls and did not exercise sufficient control over the telemarketing methods, acts and/or practices.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because he gave express consent for the telephone calls at issue in this action.

TENTH AFFIRMATIVE DEFENSE

Defendants specifically deny that they acted with any willfulness, knowledge, or malice toward Plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants' actions enable them to avail themselves of safe harbor provisions of the TCPA.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because he lacks standing to sue.

DEMAND FOR TRIAL BY JURY

Defendants hereby demand a jury trial of all issues in the Complaint which are triable to jury.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for an order of adjudication in their favor and against the Plaintiff as follows:

1. Dismissal of the Plaintiff's claims with prejudice and on the merits;
2. Award of Defendants' costs and reasonable attorneys' fees; and
3. Such other and further relief as this adjudicative body deems appropriate.

Dated: August 16, 2016

The Sultz Law Group, P.C.

By: Joseph Lipari /s/

Joseph Lipari
Jason Sultz
Attorneys for Lifewatch, Inc.
14 Wall Street, 20th Floor
Phone: 212-618-1938
Fax: 888-749-7747